

1 ROBERT E. SCHROTH SR. - BAR NO. 103063
2 ROBERT E. SCHROTH JR. - BAR NO. 212936
3 SCHROTH & SCHROTH
4 2044 FIRST AVE., SUITE 200
5 SAN DIEGO, CA 92101
6 TELEPHONE: (619) 233-7521

7
8 Attorneys for Plaintiff CANDY CARRASCO
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11 **UNITED STATES DISTRICT COURT,**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 CANDY CARRASCO,

14 Plaintiff,

15 vs.

16 DELL SERVICES FEDERAL
17 GOVERNMENT, INC., and DOES 1 to
18 30, inclusive,

19 Defendants.

20 } CASE NO. '13CV2564 DMS JMA

21 } **PLAINTIFF CANDY CARRASCO'S
22 } COMPLAINT FOR:**

23 } **(1) VIOLATION OF THE FAMILY
24 } AND MEDICAL LEAVE ACT OF
25 } 1993, 29 U.S.C. § 2601 ET SEQ.**

26 } **(2) VIOLATION OF THE
27 } CALIFORNIA FAMILY RIGHTS
28 } ACT, CALIFORNIA
29 } GOVERNMENT CODE § 12945.2**

30 } **(3) WRONGFUL TERMINATION IN
31 } VIOLATION OF PUBLIC POLICY**

32 } **DEMAND FOR JURY**

33
34 COMES NOW, Plaintiff Candy Carrasco ("Carrasco"), by and through her
35 attorney Robert E. Schroth, Jr., and complains of the Defendants, Dell Services
36 Federal Government, Inc. ("Dell"), and Does 1 through 30, inclusive, as follows:
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J.

JURISDICTION AND VENUE

1. Plaintiff's first cause of action involves application of the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. § 2601 et seq. This Court has jurisdiction of this action pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1331.

2. Plaintiff's second cause of action involves application of the California Family Rights Act, California Government Code § 12945.2. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1367.

3. Plaintiff's third cause of action involves application of California public policy and common law. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1337.

4. The claims asserted in this action arose within this district and the alleged discrimination and damage occurred in this district. Venue of this action is proper pursuant to 29 U.S.C. § 2617 and 28 U.S.C. § 1391.

PARTIES

5. Ms. Carrasco is, and at all times material hereto was, a citizen of the State of California, residing in San Diego County, California.

6. Ms. Carrasco is informed and believes, and upon that basis alleges, the defendant Dell Service Federal Government, Inc. is, and was at all times material hereto, a Virginia corporation doing business in this district, having its principal place of business in Fairfax, Virginia.

7. Carrasco is informed and believes, and upon that basis alleges, that Richard Warcholik ("Warcholik") is, and at all times material hereto was, an agent, employee and servant of the master, Dell, and was acting within the course and scope of his agency or employment authority as such, with knowledge, express or

1 implied, of Dell. Warcholik, acting under authority of Dell, terminated Carrasco
2 while she was out on leave permitted under the FMLA, and caused Carrasco to be
3 terminated from her employment in violation of the FMLA. Accordingly,
4 adherence to the fiction that Warcholik was acting outside the scope of his
5 authority would permit abuse of the corporate privilege and would sanction fraud
6 and promote injustice. Carrasco has not named Warcholik as a defendant in this
7 action to the extent prohibited by law.

8. The true names and capacities for the individual, corporate, associate or
9 otherwise of defendants, DOES 1-30, inclusive and each of them are unknown to
10 Carrasco, who therefore sues such defendants by such fictitious names. Carrasco
11 will amend this Complaint to show their true names and capacities when the same
12 have been ascertained. Carrasco is informed and believes and thereon alleges that
13 each of the defendants designated herein as a DOE is responsible in some manner
14 for the events and happenings herein referred to, and caused injuries and damages
15 proximately thereby to plaintiffs as herein alleged.

16. Carrasco is informed and believes and thereon alleges that at all times
17 material herein, each of the defendants designated herein including the fictitiously
18 designated defendants are negligently and wrongfully responsible in some manner
19 for the events and happenings herein referred to, and their negligent and/or
20 wrongful acts and omissions caused the injuries and damages to the plaintiffs as
21 herein alleged either through the defendants' own negligence and wrongful
22 conduct or through the defendants' own negligence and wrongful conduct or
23 through the conduct of one of their agents, servants, employees, representatives
24 and/or joint ventures, or due to there own ownership, rental, use, supervision,
25 entrustment, leasing, management, employment or permissive use of the
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1 instrumentality causing the injury and damages herein alleged.

2 10. Carrasco is informed and believes and thereon alleges that at all times
3 material herein, each of the defendants was an agent employee, joint venturer,
4 alter-ego, employer and representative of each of the remaining defendants, and at
5 all times mentioned herein, defendants were acting within the time and within the
6 authority, the course and scope of said agency, employment as a member of a joint
7 venture, as an alter-ego and/or within the said representation and with the full
8 knowledge, ratification, permission and consent of the remaining co-defendants,
9 and each of them.

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11 **II.**

12 **FACTUAL ALLEGATIONS**

13 11. At all times material hereto, Carrasco was employed by Dell as SND
14 Functional Area Supervisor.

15 12. In February of 2011, Carrasco informed her supervisor, Richard Warcholik
16 that she was ill and would need to take time off of work.

17 13. On or around February 21, 2011, Carrasco contacted the Human Resources
18 department at Dell to inquire about a FMLA leave. She received no response
19 from Human Resources.

20 14. On March 15, 2011, Warcholik wrote her up for the stated reason that she
21 was “absent too much.” In response to this write up, Carrasco explained that she
22 was never provided with FMLA paperwork.

23 15. On March 15, 2011, Carrasco was provided by Human Resources with the
24 necessary FMLA information. She then learned that the Human Resources
25 department of Dell no longer handled FMLA claims, but that an outside third
26 party, Aetna, handled such claims.

1 16. On March 15, 2011, Carrasco filed a request for FMLA leave. Carrasco
2 received a response that same day, indicating that she was eligible to take FMLA
3 leave and needed to file the necessary paperwork by April 3, 2011.

4 17. On March 23, 2011, the deadline to file the paperwork was extended as
5 Carrasco again received a letter from Aetna advising that she must provide a
6 Certification of Health Care Provider form by April 10, 2011.

7 18. Ms. Carrasco was terminated on March 22, 2011, despite her FMLA claim
8 being opened and the deadline for providing the necessary paperwork not yet
9 passing. The stated reason for her termination was “due to excessive absenteeism
10 without proper notification to your management team and failure to make
11 sufficient improvements to your absenteeism immediately following the Written
12 Warning that was issued to you on March 15, 2011.”

13 19. Carrasco’s FMLA request was still processing when she was terminated on
14 March 22, 2011.

15 20. During her employment with Dell, Carrasco was subject to numerous
16 instances of verbal abuse by her superiors.

17 21. On July 12, 2010, Carrasco and her employees were in the mailroom at Dell
18 looking for certain A-Files. These files were urgently needed as there were
19 interviews that morning that required these files. Carrasco’s supervisor,
20 Warcholik, opened the door to the mailroom and demanded that Carrasco
21 complete her FOSS. She explained the urgency of her current task, and
22 Warcholik immediately began yelling at her in front of her employees. Later that
23 day, Carrasco informed the Human Resources department of the encounter. She
24 described her feelings as “vulnerable,” being “guarded around him,” and being
25 “unprofessionally publicly humiliated for no apparent reason.” The company
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1 performed an internal investigation of Carrasco's complaint.

2 22. Following the investigation, Warcholik began to act in a retaliatory manner
3 toward Carrasco: He would force her to work overtime without proper
4 compensation. She was also not given her required break periods. Also, at her
5 next performance review, she was given a 1 star rating, down from a previous 5
6 star rating. Carrasco believes and alleges that her complaint filed with Human
7 Resources, and the subsequent harassment by Warcholik, was a basis for her
8 termination.

9 10 23. Following the above incident, Carrasco started to become emotionally
11 distressed. In November of 2010, she went to the ER because stress was causing
12 pain in her stomach. She underwent surgery that month to remove her
13 gallbladder. She returned to work in December 2010.

14 15 24. When Carrasco returned to work, she learned that four employees had left
16 the department. Despite this, Carrasco was still required to meet her deadlines.
17 This proved difficult because of the combined internal stress and the lack of
18 employees to complete the required tasks.

19 20 25. Carrasco tried to transfer to another job site. However, she was told by her
21 site manager that they could not afford to lose her. She was also told that her
22 medical-related absences would affect her chances of being transferred. Carrasco
23 believes and alleges that she was forced to remain in a stressful environment.

24 25 26. Between the time that she returned from her surgery in December 2010 to
26 the date of her termination, Carrasco was continually harassed by Warcholik. He
27 would write her up for excessive absences; accusing her of not being sick, but
28 rather being out partying. When Carrasco offered to show him her medical
records to prove that she was actually sick, he refused to see them.

1 27. In February 2011, Carrasco began to get sick again, and in that month took
2 the leave of absence described above in paragraph 16. Carrasco alleges and
3 believes that her absences were a basis for her termination.

4 28. Carrasco is informed and believes, and on that basis alleges, that in
5 performing the actions alleged in paragraphs 11 through 27 above, defendant
6 failed to comply with the applicable statutes and regulations, and instead,
7 performed these actions in such a way as to discriminate against Carrasco by
8 terminating her while she was out on medical leave.

9 29. Carrasco is informed and believes, and on that basis alleges, that, as a
10 proximate result of defendant's conduct. (1) Carrasco's right to extended leave to
11 care for her health was interfered with and impaired; (2) Dell's termination of
12 Carrasco was in retaliation to Carrasco taking a leave of absence to care for
13 herself and violated her right to the same or equivalent employment upon her
14 return from leave; and (3) Dell's termination of Carrasco was also in retaliation of
15 her complaint, described in paragraph 21, filed with Human Resources.

16 30. As a proximate cause of defendant's conduct, Carrasco was not
17 compensated during her leave of absence and was required to expend significant
18 personal sums for her medical necessities and her own physical and mental well-
19 being. Additionally, as a proximate cause of defendant's conduct, Carrasco has
20 been unemployed and has been and will continue to experience a loss of wages
21 while being forced to expend significant personal sums in order to obtain
22 reinstatement to the Functional Area Supervisor position to which she is entitled,
23 to provide food, shelter, and clothing for both herself, and to the provide the
24 medical care necessary for herself to assure her continued recovery. These
25 expenditures and costs are consistent with those recoverable for violation of the
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FMLA.

III.

CAUSES OF ACTION

A.

FIRST CLAIM FOR RELIEF

(Compensatory Damages and Declaratory Relief Under the FMLA)

29 U.S.C. § 2617(a)

9 31. Carrasco realleges and incorporates by reference each and every allegation
10 contained in the preceding paragraphs.

11 32. Carrasco is informed and believes, and on that basis alleges, that Dell
12 qualifies as an “employer” as that term is defined in the FMLA, 29 U.S.C. §
13 2611(4), and that Carrasco is an “eligible employee” as that term is defined in the
14 FMLA, 29 U.S.C. § 2611(2).
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16 33. Carrasco is informed and believes, and on that basis alleges, that there was
17 an “entitlement to leave” as defined in the FMLA, 29 U.S.C. § 2612(1), and that
18 Carrasco was denied her entitlement to leave as prescribed in FMLA.

19 34. Carrasco is informed and believes, and on that basis alleges, that Carrasco
20 was entitled to restoration to her position as described in the FMLA, 29 U.S.C. §
21 2614(1), and that Carrasco was denied restoration to the same or equivalent
22 position as prescribed in FMLA.

23 35. Carrasco is informed and believes and on that basis alleges that defendant is
24 responsible under the FMLA, 29 U.S.C. § 2617(a).
25

26 36. As the result of Carrasco's termination, Carrasco has incurred, and is now
27 incurring, a loss of wages and continuing health care and medical expenses, all
28 within the meaning of the FMLA, 29 U.S.C. § 2617(a), in an amount to be proved

1 at trial, but believed to exceed \$25,000. These costs include, without limitation,
2 lost wages and medical expenses during Carrasco's leave of absence, back pay
3 from the effective date of termination, lost health care and medical expenses from
4 the date of termination, and lost employment benefits from the date of
5 termination, the loss of front pay as of the date of this complaint, and any interest
6 on the amount thereon as provided in the FMLA, 29 U.S.C. § 2617. The costs
7 also include attorneys' fees that, as of the date of this complaint, exceed \$10,000.

8 37. Carrasco is informed and believes, and on that basis alleges, that pursuant to
9 29 U.S.C. § 2617(a), defendant is liable to Carrasco for the costs described in the
10 preceding paragraph.

11 38. An actual controversy now exists between Carrasco on the one hand, and
12 defendants, on the other, in that Carrasco contends that defendant is liable under
13 the FMLA, 29 U.S.C. § 2617(a), for all lost wages, benefits, and costs to be
14 incurred by Carrasco and reinstatement of Carrasco to her previous position of
15 Functional Area Supervisor, in connection with the alleged employment
16 discrimination perpetrated by Dell. Carrasco is informed and believes, and on that
17 basis alleges, that the defendant contends in all respects to the contrary.

18 39. A declaration of the rights and obligations of the parties, pursuant to
19 FMLA, 29 U.S.C. § 2617(a), binding in any subsequent action or actions to
20 recover further costs incurred by Carrasco, is appropriate and in the interests of
21 justice.

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24 **B.**

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26 **SECOND CLAIM FOR RELIEF**

27 (Unlawful Refusal Of Request For Leave Of Absence In Violation Of California
28 Government Code Section 12945.2)

1 40. Carrasco realleges and incorporates by reference each and every allegation
2 contained in the preceding paragraphs.

3 41. As more fully set forth above, Carrasco was employed by Defendants, and
4 each of them, both independently and as alter egos, for longer than twelve (12)
5 months, and Carrasco had worked more than 1,250 hours during the twelve (12)
6 month period immediately preceding her request for medical leave.

7 42. Defendant Dell is an “employer” as defined by California Government
8 Code Section 12945.2 because they employ more than fifty (50) persons to
9 perform services for a “salary” or wage, as further defined by the California Labor
10 Code.

11 43. The California Family Rights Act entitles employees who, like Carrasco,
12 have met the requirements of the act, and who make a lawful request to take up to
13 a total of twelve (12) workweeks in any 12-month period for the purpose of caring
14 for their health. As more fully set forth above, Carrasco made numerous lawful
15 requests to Defendants, and each of them, for a leave of absence from her
16 employment for medical reasons.

17 44. As also set forth more fully above, the Defendants, and each of them,
18 terminated Carrasco after her foregoing lawful requests for a leave of absence.

19 45. Defendants further failed and refused to guarantee that Carrasco would be
20 returned to her existing position, with a similar hourly wage or “salary,” once
21 Carrasco returned from leave, if any. To the contrary, Defendants terminated
22 Carrasco while she was out on medical leave.

23 46. Furthermore, Defendants also retaliated against Carrasco for her use of
24 medical leaves and for her filing of a complaint with Human Resources, causing
25 Carrasco unnecessary emotional injuries, including, but not limited to, stress,

1 embarrassment, humiliation, depression, sleeplessness, and anxiety.

2 47. Consequently, Defendants, and each of them, failed in their responsibility to
3 assess, and grant, Carrasco's entitlement to leave under the California Family
4 Rights Act, and therefore, denied Carrasco her substantive rights under the act.

5 C.
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7 **THIRD CLAIM FOR RELIEF**

8 (Wrongful Termination in Violation of Public Policy)

9 48. Carrasco realleges and incorporates by reference each and every allegation
10 contained in the preceding paragraphs.

11 49. As more fully set forth above, Defendants, and each of them, acted in
12 contravention of California public policy by refusing to allow Carrasco to take a
13 leave of absence pursuant to either the California Family Rights Act or the Family
14 and Medical Leave Act. Specifically, the California Legislature has, through its
15 enactment of the foregoing legislation, recognized the need to allow families and
16 employees within the State of California to take a leave of absence from their
17 employment to care for their health. Indeed, the Legislature has deemed this
18 public policy so important that beginning July 1, 2004, California employees have
19 the legal right under the "California Paid Family Leave" Act to collect up to
20 twelve (12) weeks of disability compensation per year. The purpose of the
21 California Family Rights Act is to encourage more employees to take time off to
22 take care of their health.

23 50. As a proximate result of Carrasco's inability and refusal to accept
24 Defendant's illegal conduct as described more fully above, and in violation of
25 public policy as also described more fully above, Defendants, by and through its
26 partners, officers, agents, servants, managers, and supervisors, intentionally and

1 knowingly created, fostered, accepted, and ratified intolerable working conditions
2 for Carrasco. At all relevant times to this Complaint, Defendants had actual
3 knowledge of the foregoing intolerable working conditions and yet, despite this
4 knowledge, Defendants, and each of them, failed and refused to alleviate the
5 same.

6 51. Consequently, Carrasco has suffered the loss of her employment, attendant
7 compensation, other economic damages, and emotional damages including, but
8 not limited to, depression, anxiety, sleeplessness, humiliation, and embarrassment,
9 all to his detriment and in an amount to be proved at trial.

10 52. In doing acts set forth above, Defendants, and each of them, knew and
11 understood that their failure to allow Carrasco medical leave, was blatantly
12 unlawful and in direct violation of well-established public policy. In fact,
13 Carrasco brought the foregoing matters to the attention of Defendants, and each of
14 them, on numerous occasions throughout the entirety of her employment tenure
15 with Defendants.

16 53. Notwithstanding the foregoing knowledge, Defendants despicably subjected
17 Carrasco to cruel and unjust hardship in conscious disregard of Carrasco's rights
18 by terminating Carrasco during her election to take medical leave. The
19 Defendants, and each of them, and Carrasco's supervisor, Warcholik, committed
20 this oppressive conduct. The Defendants' foregoing conduct was so willful and
21 despicable that it warrants the assessment of punitive damages.

22 54. Defendants, and each of them, authorized and ratified the conduct of their
23 employees, managers, supervisors, and managing agents by allowing such blatant
24 violations of public policy. At all times relevant to this Complaint, Defendants,
25 and each of them, knew and understood the nature and extent of the intolerable

1 working conditions placed upon Carrasco's employment. Indeed, as mentioned
2 above, Carrasco continually notified the Defendants, and each of them, of the
3 nature and extent of the intolerable working conditions that she was suffering.
4

5 55. Notwithstanding the numerous and continuous notices and warnings that
6 Carrasco provided, Defendants, and each of them, intentionally failed and refused
7 to cure or otherwise reform their unlawful conduct. The foregoing unlawful
8 conduct was, at all times relevant to this Complaint, ratified, authorized, and
9 performed at the direction of the Each of the directors, managing partners,
10 partners, officers, and/or agents of Defendant Dell. Said unlawful conduct was
11 further ratified, authorized, and performed at the direction of Defendant's Human
12 Resource Manager, and managing agent, Richard Warcholik.
13

IV.

PRAYER FOR RELIEF

16 WHEREFORE, Carrasco prays for judgment against the Defendants as
17 follows:
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19 **AS TO THE FIRST CLAIM FOR RELIEF FOR COMPENSATORY**
DAMAGES AND DECLARATORY RELIEF UNDER THE FMLA.

20 1. For compensatory damages and other costs incurred by Carrasco according
21 to proof, but believed to exceed \$25,000.
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23 2. For Carrasco's reasonable attorneys' fees.
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25 3. For a judicial declaration that the defendant is liable under the FMLA, 29
U.S.C. § 2617(a) for all past, present and future lost wages, employment benefits
26 and other costs incurred by Carrasco in connection with Carrasco's termination of
27 employment of Dell, including, without limitation, reasonable attorneys' fees.
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1 For damages according to proof, including lost earnings and other related
2 employee benefits, both past and future;

3 **AS TO THE SECOND CLAIM FOR RELIEF FOR DAMAGES UNDER THE**
4 **CFRA**

5 4. For an award of punitive damages insofar as the intolerable working
6 conditions that Defendants intentionally and knowingly created, and which caused
7 Carrasco's termination, was despicable conduct outside all decent bounds
8 tolerated by society. Said punitive damages should be in an amount appropriate to
9 punish or set an example of the Defendants and to deter others from engaging in
10 similar conduct;

11 5. For compensatory damages according to proof, including lost earnings and
12 other related employee benefits, and damages for emotional distress including, but
13 not limited to depression, anxiety, sleeplessness, humiliation, and embarrassment;

14 6. For interest on lost earnings at the prevailing legal rate from March 22,
15 2011;

16 7. For reasonable attorneys fees incurred by Carrasco in obtaining the wages
17 and benefits owed to her by Defendants during the course of her employment, and
18 as otherwise allowable by law;

19 **AS TO THE THIRD CLAIM FOR RELIEF FOR DAMAGES FOR**
20 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

21 8. For damages according to proof, including lost earnings and other employee
22 benefits, both past and future;

23 9. For an award of punitive damages insofar as the intolerable working

1 conditions that Defendants intentionally and knowingly created, and which caused
2 Carrasco's termination, was despicable conduct outside all decent bounds
3 tolerated by society. Said punitive damages should be in an amount appropriate to
4 punish or set an example of the Defendants to deter other from engaging in similar
5 conduct;

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7 10. For compensatory damages according to proof, including lost earnings and
8 other employee benefits, and damages for emotional distress including, but not
9 limited to depression, anxiety, sleeplessness, humiliation, and embarrassment;

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11 11. For interest on lost earnings at the prevailing legal rate from March 22,
12 2011;

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14 12. For reasonable attorneys fees incurred by Carrasco in obtaining the benefits
15 owed to her by Defendants during the course of her employment, and as otherwise
16 allowable by law;

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18 AS TO ALL CLAIMS

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20 13. For all costs of suit herein; and

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22 14. For such other and further relief as the Court deems just and proper.

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24 DATED: October 23, 2013

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26 ROBERT E. SCHROTH JR. -
27 Attorneys for Plaintiff

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29 By: /s/ Robert E. Schroth, Jr.
30 ROBERT E. SCHROTH JR